DIGEST OF IMPORTANT DECISIONS

EDITED BY

ALFRED ROLAND HAIG.

ADMIRALTY.

Cases selected by HORACE L. CHEVNEY.

MARITIME LEGISLATION.

1. *State Statutes—Actions for Death.*

A State statute giving damages for death by negligence, as applied to a negligent collision on navigable waters within the State, is valid. An action to recover such damages is for a tort, which by its nature and locality is a maritime tort, and as such is within the ancient jurisdiction of the District Court, and equally so whether the right of action is given by State or by Federal legislation. Though no lien is raised by implication, the statutory right may be enforced by an admiralty proceeding *in personam*. The grounds of action are not statutory, but only the right to a remedy, which it is competent for the State to enact in the absence of legislation by Congress, and which, under the provisions of the limited liability acts (Rev. St. U. S., §§ 4283-4285), as interpreted by the Supreme Court, it is incumbent on the District Court to recognize and enforce: The City of Norwalk, District Court of the United States, Southern District of New York, BROWN, J., March 27, 1893, 55 Fed. Rep., 98.

SALVAGE.

2. *Award—Right of Charterer to Share.*

A steamer was chartered to carry a cargo to a certain port. The charter party provided that the steamer should "have liberty to tow and be towed, and to assist vessels in all situations;" and the bill of lading provided that she should "have liberty to tow and assist vessels in distress, and to deviate for the purpose of saving life or property." The master and crew were in full control and charge of the steamer during the whole voyage, subject to no orders from the charterer, and there was no supercargo aboard. During the voyage she rendered salvage services to another vessel, and was thereby delayed for several days. *Held*, that the charterer was not entitled to any damages for the delay occasioned by the services rendered: "The Brirham," District Court of the United States, Eastern District of Virginia, HUGHES, J., March 1, 1893, 54 Fed. Rep., 529.

3. *Rights of Shipper—Effect of Bill of Lading.*

A provision of a bill of lading for part of the cargo of a salving ship, that the ship might "tow and assist vessels in all situations . . . without the same being deemed a deviation," does not make the shipper a joint salvor to the extent of his interest in the cargo jeopardized. A

shipper taking such a bill of lading naturally looks to insurance for protection, and cannot be deemed to turn his contract of affreightment into a salvage expedition. As a consequence, the interest of such a shipper is not to be counted in arriving at the value of the cargo risked to effect the salvage. "The Blaireau," 2 Cranch, 240, distinguished: "The Depuy de Loure," District Court of the United States, Eastern District of Louisiana, BILLINGS, J., March 28, 1893, 55 Fed. Rep., 93.

CARRIERS AND TRANSPORTATION COMPANIES.

Cases selected by OWEN WISTER.

CARRIERS.

1. *Merchandise Shipped as Baggage—Negligence.*

When a passenger bought a ticket and checked a trunk in the ordinary manner, making no mention of its contents, upon the trunk being burned and the contents destroyed by an accident, the company's liability will be limited as for personal baggage, though, as a matter of fact, the trunk contained jewelry, which the passenger, a salesman, had intended selling to his principal customers. The price of a ticket makes a railroad company responsible for the loss of ordinary personal effects, and is proportionable to the risk the carrier was in transporting such effects; but not effects of extraordinary value: Humphreys *v.* Perry, April 10, 1893, 13 Supreme Court Rep., 711. See Gibbon *v.* Paynton, 4 Burr., 2298; Batson *v.* Donovan, 4 Barn. & Ald., 21; Alliay *v.* R. R. Co., 126 Mass., 121; Millard *v.* R. R. Co., 86 N. Y., 441.

2. *Passenger, Ejection of—Fare Paid on Train.*

Railway companies may require passengers to purchase tickets before taking passage upon trains, and in case facilities for so purchasing tickets are provided, those who do not purchase tickets may be required to pay an extra fare upon the train: Sage *v.* Evansville & T. H. R. Co., Supreme Court of Indiana, March 11, 1893, 33 N. E. Rep., 771; Ry. Co. *v.* Vandyke, 57 Ind., 576; Falkner *v.* Ry. Co., 55 Ind., 369; Ry. Co. *v.* Rogers, 28 Ind., 1; Ry. Co. *v.* Rinard, 46 Ind., 293. [*Query:* Where a station is closed before train time habitually, so a passenger is unable to buy a ticket, from whence is the company's right to charge him extra fare derived?—O. W.]

3. *Passenger, Injury to, while Alighting—Failure of Carrier to Stop Train—Negligence—Instructions—Assumption of Facts.*

The plaintiff offered evidence tending to show that he was invited to take a free ride by the conductor of a train, who agreed to put him down between stations; and that under the conductor's instructions (the train not stopping to let him off) he jumped off, and was hurt. The Court instructed the jury that if they believed this, that the conductor had not, as agreed, stopped to let the plaintiff off, but advised him to jump,

telling him it was not dangerous, and that under the circumstances it did not appear to the plaintiff to be dangerous to get off the train at the time, and that acting under the direction and advice of said conductor, he attempted to get off, and in doing so was violently thrown down and injured, then the plaintiff was entitled to recover from defendant the actual damages sustained by him. *Held*, erroneous. It is beyond the province of the Court to declare that certain acts enumerated constitute negligence; this is to be determined by the jury: Gulf C. & S. F. Ry. Co. *v.* Bagley, Court of Civil Appeals of Texas, April 19, 1893, 22 S. W. Rep., 68.

In Thomas *v.* Charlotte, C. & A. Ry. Co., Supreme Court of South Carolina, March 18, 1893, 17 S. E. Rep., 226, the facts are materially the same as those in the case preceding, except that the plaintiff was not traveling upon invitation, but paid his fare. The plaintiff's complaint averred that the defendant "negligently refused to stop the train . . . but obliged the plaintiff to jump from said car while it was in rapid motion." . . . The import of the words, "obliged the plaintiff to jump," does not appear in the report. A non-suit was moved for and entered with judgment thereon. Appealed. Reversed.

NEGLIGENCE.

4. *Injury to Person on Railroad Track—Proximate Cause.*

The plaintiff, a child of 6, with her family took passage for a station at which they proceeded to alight when the train stopped there. Part of them were off when the train went on, and the conductor told the others they must wait and get off at the next station and walk back. The only way back was along the track, there being water on each side. The track was a straight line between the two stations. On the way back the plaintiff became frightened by the approach of a train, and, breaking from her father's hand, ran, and was injured by the train, the fireman of which had seen her, as had also the engineer, when some one hundred yards away. The train was going at fifteen miles an hour, and had not slowed, nor was bell rung nor whistle blown. The plaintiff's father knew that a return train was expected. *Held*, The plaintiff's act could not have been anticipated. The carrying her beyond her station was not the proximate cause of the injury. When she left the car without asking to be carried back and left where she ought to have been left, the contract relation between her and the defendant ceased: Benson *v.* Central Pacific R. R. Co., Supreme Court of California, March 30, 1893, 32 Pac. Rep., 809.

RAILROADS.

5. *Regulations — Separate Accommodations for Whites and Blacks.*

Depot agents have the power, as incident to the office, to make reasonable regulations as to the conduct of business at their depots, respectively, unless restricted, limited or controlled in that respect. A rule (made by such depot agent) providing for the separation of white and colored passengers by separate waiting-rooms is, in the absence of any statute to the contrary, not unlawful if accommodations equal in all

respects are furnished to both. A black woman applied for a ticket at the whites' window, and on her refusing to go to the room and window assigned to her race, was forcibly ejected from the room by the agent. Action by her against the receiver of the company. Judgment for defendant. Appealed. Affirmed. Smith, *et al.*, *v.* Chamberlain, Supreme Court of South Carolina, March, 1893, 17 S. E. Rep., 371.

COMMERCIAL LAW.

Cases selected by FRANCIS H. BOHLEN.

CONTRACT.

1. *Proposal by Telegram—Acceptance.*

Where the plaintiff makes a proposal by telegram, with request to reply by telegram, and the defendant replies by a telegram which contains no acceptance of the proposal, but a new proposal, and no notice that a letter is to be written, the plaintiff may treat his proposal as rejected, although a letter subsequently arrives accepting plaintiff's proposal: Goulding *v.* Hammond, Circuit Court of Appeals, Fifth Circuit, LOCKE, D. J., February 6, 1893, 54 Fed. Rep., 639.

2. *Rescission—Breach of Warranty.*

On a rescission by defendant for breach of warranty of a contract with plaintiff for the exchange of chattels, where defendant returns the chattel received by him, and plaintiff refuses on demand to deliver up the chattel in his possession, defendant may enter the premises of the other party to reclaim his original chattel.

Where the chattel received by the defendant was a buggy, the springs of which were warranted by plaintiff, and a spring broke without defendant's fault, so as to cause a breach of warranty, defendant could rescind by returning the buggy in its broken condition, and he was not obliged to return it in the same condition in which he received it.

A purchaser of an article may examine it for himself, and exercise his own judgment upon it, and at the same time protect himself by taking a warranty from the vendor: Smith *v.* Hale, Supreme Judicial Court of Massachusetts, ALLEN, J., March 1, 1893, N. E. Rep., 493.

CONSTITUTIONAL LAW.

Cases selected by WILLIAM STRUTHERS ELLIS.

DUE PROCESS OF LAW.

1. *Assessment for Construction of Sewers—Notice.*

A city charter which grants, in general terms, power to the council to construct sewers and assess the cost thereof upon the property benefited thereby, is not open to the objection that it deprives the citizen of his property without due process of law, because it contains no express

provision for notice of such assessment. The power generally conferred is subject to all constitutional restrictions, of which the requirement of notice is one. The city is a miniature State; the council is its legislature; the charter is its constitution; and it is enough if in that the power is granted in general terms, for when granted it must necessarily be exercised subject to all limitations imposed by constitutional provisions: Paulsen *v.* City of Portland, Supreme Court of the United States, BREWER, J., April 17, 1893, 13 Sup. Ct. Rep., 750.

FEDERAL JURISDICTION.

2. *Citizenship—Removal of Causes—Order from Federal Court—Refusal of State Court.*

The Removal Act of 1887, as amended in 1888, provides that when, in a suit in a State Court, there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State, any defendant, being such citizen of another State, may remove such suit into the Circuit Court of the United States on proper showing. Where neither plaintiff nor defendant is a citizen of the State in which the action is brought, the Circuit Court has no jurisdiction, and where such court makes an order that the cause be certified thereto, the State court may decline to permit the removal. An order by the federal judge for the removal, based on an affidavit plainly insufficient to authorize it, does not constitute a removal of the cause, and the jurisdiction of the State court is not thereby ousted: Lawson *v.* Richmond & D. R. R. Co., Supreme Court of North Carolina, AVERY, J., March 21, 1893, 17 S. E. Rep., 169.

3. *Suits Against Counties.*

Under a State Act (Arkansas, February 27, 1879) which repeals all laws allowing suits against counties, and provides that any person having a claim against a county must present the same to the county court for allowance or rejection, with the right of appeal to either party from the action thereon: *Held*, that the allowance or rejection of a claim either has the form or effect of a judgment for or against the county from which the appeal will lie, or it is merely a preliminary proceeding which may be carried into an appellate court where an actual trial is had. In either view the result is that counties are in substance and effect suable by the local law, and, therefore, subject to a suit in a federal court by original process: Chicot County *v.* Sherwood, Supreme Court of the United States, JACKSON, J., April 3, 1893, 13 Sup. Ct. Rep., 695.

4. *Supreme Court—Rehearing—Federal Question.*

A federal question cannot be raised for the first time by a petition for a rehearing after judgment in the highest court of a State, so as to bring the case within the appellate jurisdiction of the United States Supreme Court: Bushnell *v.* Crooke Mining and Smelting Co., Supreme Court of the United States, JACKSON, J., April 17, 1893, 13 Sup. Ct. Rep., 771.

See PLEADING AND PRACTICE, 5, 6.

OBLIGATION OF CONTRACTS.

5. *Railroad Companies—Foreclosure and Reorganization.*

A New York statute (Laws, 1874, c. 430, as amended by Laws, 1876, c. 446) gives to the purchasers of railroad property and franchises at a foreclosure sale the right to form a new corporation with all the rights, powers and privileges of the old one upon filing with the Secretary of State a certificate in form therein prescribed. *Held*, that the right conferred was not a contract right, but was a mere regulation of law, and the subsequent Act requiring as a condition precedent to obtaining a charter (Laws, 1886, c. 143) the payment of a sum equal to one-eighth of 1 per cent. upon the proposed amount of capital stock of the new company was not, as applied to purchasers at the foreclosure of a pre-existing mortgage, an Act impairing the obligation of contracts within the meaning of the Federal Constitution: People *v.* Cook, Supreme Court of the United States, JACKSON, J., April 3, 1893, 13 Sup. Ct. Rep., 645.

CORPORATIONS.

Cases selected by LEWIS LAWRENCE SMITH.

BANKS.

1. *Insolvency—Preferred Claim.*

The treasurer of a board of education without authority placed the school funds in a bank of which he was manager, and the owner of which had knowledge of the character of the funds. They were wrongfully used in the business of the bank, and for the payment of indebtedness against it. Afterward the owner of the bank became insolvent, and made an assignment of his property for the benefit of creditors. The assets which came into the hands of the assignee consisted of real property, securities and cash. But the amount of the school money wrongfully converted, and which was impressed with a trust, was largely in excess of the cash on hand at the time of the assignment. The trust fund could not be clearly traced to any particular asset in the hands of the assignee, but it was shown to have gone into and been used for the benefit of the estate. It was held that the trust fund became a charge upon the entire assets with which it was mingled, and that the board of education had a preferred right to the assets over general creditors to the extent of the fund converted: Myers *v.* Board of Education, Supreme Court of Kansas, JOHNSTON, J., March 11, 1893, 32 Pac. Rep., 658.

BUILDING ASSOCIATIONS.

2. *Withdrawal.*

Knowingly and intentionally participating as a stockholder in stockholders' meetings held six and ten months after giving notice of withdrawal, constitutes a waiver of the right to withdraw under said notice: Decatur Building & Inv. Co. *v.* Neal, Supreme Court of Alabama, STONE, C. J., February 1, 1893, 12 Southern Rep., 780.

3. *Usury.*

Where a member of a building and loan association in negotiating a loan for the amount of his stock agrees to pay a premium of 40 per cent. to obtain the loan, and executes his note for the whole sum loaned, bearing 8 per cent. interest, the contract of loan, in that it provides for the payment of interest on the premium, is usurious: Sullivan *v.* Jackson B. & L. Assoc., Supreme Court of Mississippi, WOODS, J., November 28, 1892, 12 Southern Rep., 590.

DIRECTORS.

4. *Personal Liability.*

A statute of Illinois provides that, "if the indebtedness of any stock corpo ration shall exceed the amount of its capital stock, the directors and officers of such corporation assenting thereto shall be personally and individua lly liable for such excess." The Court held that this statute was to be co nstrued strictly, and did not apply to a case where directors had recog nized the debts in excess of the capital, created by one of their number whom they had allowed to manage the corporation. The assent referred to in the statute was the assent to the creation of the debts, not the assent to their payment: Lewis *v.* Montgomery, Supreme Court of Illinois, BAILEY, C. J., April 3, 1893, 33 N. E. Rep., 880.

MUTUAL BENEFIT ASSOCIATIONS.

5. *Secession of Majority.*

Where a local division of a beneficial society, by virtue of its constitution and by-laws, is a member of a national organization, a majority of the local division has no power, against the will of the minority, to renounce allegiance to the national body, and at the same time carry with it the property of the local division, since the secession of the majority deprives it of all property rights in the organization. The fact that the su bsequent proceedings of the minority in continuing the organization were irregular, and in violation of the constitution of the national body, does not give the seceding majority any rights in the property of the local division: Gorman *v.* O'Connor, Supreme Court of Pennsylvania, PER CURIAM, April 17, 1893, 26 Atl. Rep., 379.

6. *Distribution of Assets.*

The Order of the Golden Lion, a mutual benefit insurance corporation, was organized under St. 1888, c. 429, as amended by St. 1890, c. 341, of Massachusetts, which provided that all the money derived from the first-class assessments therein provided for should be divided into two funds—one to be set aside as a reserve fund for the exclusive payment of matured endowment certificates, and the other to constitute a benefit fund, to be applied exclusively to the payment of disability benefits—and that no portion of the moneys so received should be used for any other purpose. The act further provided for assessments to meet expenses. A receiver was appointed for the corporation in a suit to wind up its affairs. *Held*, that although the business prosecuted by the corporation may have been illegal, and *ultra vires*, the certificate holders were not entitled to recover the moneys paid by them in assessments and initiation

fees as for money had and received, but, in distributing the assets, each should receive from the fund derived from assessments of the first class a dividend in proportion to the amount paid by him into that fund.

The date of filing the bill for a receiver of the corporation is to be taken as the date which fixes the rights of the parties.

Holders of certificates who have failed to pay assessments made on them before the day on which notice of the appointment of the receiver was served on them, were held not entitled to prove their claims against the assets, where the assessments were payable before that date: Fogg *v.* Supreme Lodge, Supreme Judicial Court of Massachusetts, ALLEN, J., April 7, 1893, 33 N. E. Rep., 692.

ORGANIZATION.

7. *Expenses of Promoters.*

A corporation is liable for the expenses of its promoters in procuring a subscription, where, after its organization, it accepts the subscription with a knowledge of such expenses: Weatherford, etc., R. R. Co. *v.* Granger, Court of Civil Appeals of Texas, HEAD, J., March 30, 1893, 22 S. W. Rep., 70.

STOCKHOLDERS.

8. *Rights of Minority.*

While a single stockholder may file a bill in equity to restrain the majority stockholders from doing acts, in the name of the corporation, which are *ultra vires*, yet where there is statutory authority a majority may dispose of the property and franchises to another corporation against the will of the minority. Upon such a sale the purchasing corporation mortgaged the property and issued bonds for the same. A minority stockholder in the seller, having dissented from the sale, brought suit against both corporations to set it aside, which resulted in a decree upholding the sale, but providing that such stockholder, on tendering his stock to the purchasing company, should have a right to receive an equal number of shares in the purchaser, or to have an execution against the same for the value of his stock. He elected to take the latter course, and asked for the declaration of a lien prior to the mortgage, but this was denied. In a subsequent suit to foreclose the mortgage, he intervened, claiming an equitable lien prior thereto for the value of his stock. It was held that he could assert no right or interest in the corporate property so conveyed superior to the mortgage or the bonds thereby secured: Farmers' L. & T. Co. *v.* R. R. C., Circuit Court of Appeals, Eighth Circuit, JACKSON, Circ. J., February 14, 1893, 54 Fed. Rep., 759.

VOTING.

9. *Proxy.*

Where the charter of a railroad company provides that "each share entitles the holder thereof to one vote, which vote may be given by said stockholder in person, or by lawful proxy," and the appointment is without limitation, a vote by the proxy binds the stockholder, whether exercised in his interest or not, to the same extent as if the vote had been cast in person: M. & O. R. R. Co. *v.* Nicholas, Supreme Court of Alabama, COLEMAN, J., April 4, 1893, 12 Southern Rep., 723.

CRIMINAL LAW.

Cases selected by ROBERT J. BRYON.

CONFESSIONS.

1. *Prisoner Tied During Examination.*

The fact that a prisoner charged with murder was tied during hi preliminary examination by the committing magistrate is not a valid objection to the admission of a confession made by him during such examination when it does not appear that he was tied in such a manner as to produce pain, or to tend to induce or extort from him a confession; but the practice of keeping the prisoner shackled or tied during such examination is not to be commended: State *v.* Rogers, Supreme Court of North Carolina, MACRAE, J., April 11, 1893, 17 S. E. Rep., 297.

FORGERY.

2. *Signing Name of Dead or Incapacitated Person.*

It is forgery to sign a dead person's name to an instrument with intent to defraud, and a person is guilty of forgery if, with intent to defraud, he signs an instrument with the name of a person who has no legal capacity to execute it, or if he makes a false instrument by signing a fictitious name: Brewer *v.* State, Court of Civil Appeals of Texas, DAVIDSON, J., April 22, 1893, 22 S. W. Rep., 41.

MURDER.

3. *Deliberation and Premeditation.*

Where, on a trial for murder, the defendant's conduct for a few seconds preceding the killing pointed to both deliberation and premeditation, an instruction that "if for any period of time, no matter how short, there was a conscious design to kill, the killing was murder in the first degree," could not have misled the jury: Commonwealth *v.* Buccieri, Supreme Court of Pennsylvunia, DEAN, J., March 20, 1893, 26 Atl. Rep., 228; 32 W. N. C., 113.

EVIDENCE.

Cases selected by HENRY N. SMALTZ.

EXPERT WITNESS.

1. *Compensation.*

An expert witness, who testifies for the people in a criminal case in obedience to a subpœna, without making in advance any demand for special compensation, is entitled to recover only the statutory witness fees: Board of Commissioners *v.* Lee, Court of Appeals of Colorado, BISSEL, J., March 27, 1893, 32 Pac. Rep., 811.

CONFESSIONS. See *Criminal Law.*

INSURANCE.

Cases selected by HORACE L. CHEYNEY.

FIRE INSURANCE.

1. *Action on Policy by Mortgagee.*

A policy of fire insurance insured A in a given sum, part of it on one property, part on another, loss payable to B "mortgagee, as his interest may appear." B's mortgage covered only one of the properties insured. *Held*, that B could sue on the policy in his own name, and recover total loss on both properties, not exceeding his debt, notwithstanding his mortgage covered only one of the properties insured. The words, "as his interest may appear," do not refer to the mortgagee's interest in the property, but to the amount of his mortgage debt; if, at the loss, his debt had been paid, he would have no interest; if still unpaid, he would get all the compensation for all the loss, not exceeding, however, his debt; it makes no difference that the property covered by the mortgage and loss is only a part of the total loss, and not adequate to pay the debt, the whole loss from all the property shall go on the debt; it was the debt under the mortgage designed to be secured: Colby *v.* Parkersburg Ins. Co., Supreme Court of Appeals of West Virginia, BRANNON, J., April 1, 1893, S. E. Rep., 303.

LIFE INSURANCE.

2. *False Representations.*

An applicant for insurance, in answer to the question to what extent he used alcoholic stimulants, answered "None." *Held*, that proof of a single use of liquor was not sufficient to prove the answer untrue, but that it would be necessary, for that purpose, to prove a habit or custom of using such stimulants: Grand Lodge A. O. U. W., *et al. v.* Belcham, Supreme Court of Illinois, CRAIG, J., April 3, 1893, 33 N. E. Rep., 886.

MARINE INSURANCE.

3. *Authority of Agent—Local Usage.*

A well-defined local usage, whereby marine insurance agents can make binding contracts to take effect on the day of application, without consulting their superiors, is presumably known to a foreign company engaged for years in insurance business at the place where the usage obtains, and is sufficient to prevail over the private instructions of such agents when the insured is in ignorance thereof, and is without notice of facts sufficient to put him upon inquiry. The fact that a local agent has no power to issue policies does not necessarily show that he is without authority to make binding preliminary contracts of insurance: Greenwich Ins. Co. *v.* Waterman, Circuit Court of Appeals of United States, Sixth Circuit, TAFT, J., HAMMOND, J., dissenting, March 30, 1893, 54 Fed. Rep., 839.

4. *Cancellation of Policy—Mistake of Fact.*

Where a policy of marine insurance is canceled, by mutual consent,

on the return of the unearned premium, and neither party at the time knew that the insured steamer had been lost, the cancellation is voidable, as made in ignorance of a material fact, and the insured is entitled to recover the amount of the policy less the returned premium: Duncan *v.* New York Mut. Ins. Co., Court of Appeals of New York, O'BRIEN, J., April 11, 1893, 33 N. E. Rep., 729.

MUNICIPAL CORPORATIONS AND PUBLIC LAW.

Cases selected by MAYNE R. LONGSTRETH.

MARKETS.

1. *Interest of Lessee of Stall—Ejectment by Eminent Domain.*

The lessee of a stand or stall in a market has no such exclusive right to the possession of his stall as he might have to a store or dwelling house rented by him. He has no right to the ground covered by his stall, as ground, and he has no estate in the building, or definite legal standing that will enable him to recover his stall by an action of ejectment if he should be wrongfully put out of possession; and therefore is not entitled to damages from a railroad company which condemns the market house under its right of eminent domain. He must look elsewhere for his damage: Strickland *v.* Pennsylvania Railroad Company, Supreme Court of Pennsylvania, WILLIAMS, J., April 24, 1893, 154 Pa., 348; 32 W. N. C., 211.

MUNICIPALITY.

2. *Local Improvements—Navigable Streams.*

A municipal corporation cannot levy a special assessment for widening a navigable river, like the Chicago River, under its power "to make local improvements by special assessment," since the improvement of a navigable stream for the benefit of commerce is not a local improvement. Any property owner affected by the proposed widening of the river may object on the ground of the city's want of power, although the United States make no complaint, as it could under the Act of Congress of September 19, 1890, § 7, making it unlawful "to alter or modify the course, location, condition or capacity of the channel" of any navigable waters of the United States, unless such change is approved by the Secretary of War: City of Chicago *v.* Law, Supreme Court of Illinois, CRAIG, J., March 31, 1893, 33 N. E. Rep., 855.

3. *Obstruction to Sidewalk—Notice.*

While an action against a municipality to recover damages for personal injuries caused by an unlawful obstruction of the sidewalk cannot be sustained unless the city had notice of this obstruction and was negligent in not removing it, it is for the jury to determine whether the constant repetition of the act of placing machinery and castings upon the sidewalk by an iron company, was such as to amount to a substantial continuity of obstruction and so bind the city with notice, or was merely in each instance a separate and lawful temporary use of the sidewalk; and it is error for the Court to nonsuit a plaintiff producing some evidence of such continuity of obstruction: Davis *v.* Corry City, Supreme Court of Pennsylvania, DEAN, J., May 8, 1893, 154 Pa., 598.

PUBLIC OFFICERS.

4. *Mandamus to Compel Acceptance of Office.*

Mandamus will lie to compel acceptance of municipal office by one who, possessing the requisite qualifications, has been duly appointed to the same: People *v.* Williams, Supreme Court of Illinois, SHOPE, J., March 31, 1893, 33 N. E. Rep., 849.

This question has not been previously decided in this country. See Merrill on Mandamus, § 145; Dillon on Municipal Corporations, 4th Ed., § 223.

See PRACTICE, 7.

REVENUE LAWS.

5. *Sugar Bounty—Assignment for the Benefit of Creditors.*

The Sugar Bounty provided for in the Act of October 1, 1890, is not a pure gratuity granted by the government, or a mere recompense for personal services, but is compensation offered for the purpose of stimulating production; and when a producer accepts the offer and complies with the statute, there is a contract between him and the government. A claim for such bounty is a vested right constituting property subject to be sold on execution, and will, therefore, pass under the insolvency laws to an assignee for the benefit of creditors: Calder *v.* Henderson, United States Circuit Court of Appeals, Fifth Circuit, PARDEE, Circ. J., January 25, 1893, 54 Fed. Rep., 802.

MUTUAL RELATIONS.

HUSBAND AND WIFE. See PROPERTY, 4, 5; PLEADING, 3, 4.

PLEADING AND PRACTICE.

Cases selected by ARDEMUS STEWART.

PLEADING.

ELECTION CONTEST.

1. *Petition—Sufficiency.*

In an election contest instituted in the Supreme Court, a petition which alleges that the election judges in each and every precinct rejected a large number of legal votes given for contestant, for the reason that the cross was not placed in the proper position, is too indefinite: Smith *v.* Harris, Supreme Court of Colorado, PER CURIAM, March 6, 1893, 32 Pac. Rep., 616.

JURISDICTION.

2. *Action on Judgment Obtained in Another State—Plea to Jurisdiction, Requisites of.*

Where a party sued in one State on a judgment obtained against him in a sister State undertakes to question the jurisdiction of the Court of the latter State over him, his plea must negative by certain and positive

averments every fact upon which such jurisdiction can be legally predicated. If by any reasonable intendment the facts alleged in the plea can exist, and the Court rendering the judgment could still have had jurisdiction, the plea is bad: Sammis *v.* Wightman, Supreme Court of Florida, RONEY, C. J., February 15, 1893, 12 So. Rep., 526.

REPLEVIN.

3. *Allegation of Ownership by Married Woman.*

In replevin by a married woman, where the complaint alleges that she is the owner of the property, she need not show in her pleadings that she acquired her title through one of the channels by which a married woman is allowed to acquire separate property: Freeburger *v.* Caldwell, Supreme Court of Washington, STILES, J., February 18, 1893, 32 Pac. Rep., 732.

VARIANCE.

4. *Property of Husband or Wife.*

Where, in an action for damages to real estate, the petition alleges that the property belongs to a married woman, one of the plaintiffs, and the proof shows that it is either the common property of herself and husband or the separate property of the husband, there is a fatal variance: Galveston, H. & S. A. R. Co. *v.* Becht, Court of Civil Appeals of Texas, WILLIAMS, J., March 16, 1893, 21 S. W. Rep., 971.

PRACTICE.

FEDERAL COURTS.

5. *Supreme Court—Mandamus to Circuit Court of Appeals—Certiorari—Receivers.*

Where the Circuit Court of Appeals, under the authority given it by Section 7 of the Judiciary Act of March 3, 1891, to entertain an appeal from an interlocutory order "granting or continuing an injunction," entertains an appeal from an order appointing a receiver for a railroad company and enjoining the disposition of its property, and not only modifies the injunction, but also directs the Circuit Court to discharge the receiver and restore the property to the company, its action in the latter respect, even if erroneous, is no ground for interference by the Supreme Court by writ of mandamus, for the appeal from the injunctional part of the decree was clearly authorized, and the case was within the jurisdiction of the Circuit Court of Appeals.

Such a case is not one for the interposition of the Supreme Court by writ of certiorari under Section 6 of the Judiciary Act of March 3, 1891, for this branch of its jurisdiction is to be sparingly exercised; and the decree of the Circuit Court of Appeals was neither so important in its immediate effect, nor so far-reaching in its consequences, as to warrant the Supreme Court in issuing the writ.

The question whether the Circuit Court of Appeals has authority to entertain an appeal from a decree setting aside an order appointing a receiver is not of such importance, even though the Court has exercised such authority, as to require the interposition of the Supreme

Court, either by mandamus or certiorari for, even if the interlocutory order could not be the subject of a separate appeal, it might be brought before the Circuit Court of Appeals on appeal from the final decree in the cause.

Where, however, upon an appeal from an order made in the Circuit Court by the district judge, setting aside an order made by the circuit judge, the circuit judge takes part in the decision in the Circuit Court of appeals, the question whether he was not disqualified to so take part under Section 3 of the Judiciary Act of March 3, 1891, and whether the decree of the Circuit Court of Appeals was not therefore void, is one which deeply affects the administration of justice in that court; and, in order to determine the same, the Supreme Court will issue a rule to show cause why a writ of certiorari should not issue, and if it should be determined upon the hearing thereof that the circuit judge was disqualified, and that the decree was therefore void, the writ will issue to bring up and quash the same: American Construction Co. *v.* Jacksonville, T. & K. W. Ry. Co., Supreme Court of the United States, GRAY, J., March 27, 1893, 13 Sup. Ct. Rep., 758.

6. *Supreme Court—Jurisdiction—Mandamus to Circuit Court of Appeals.*

The Supreme Court of the United States has no jurisdiction to issue a writ of mandamus to the Circuit Conrt of Appeals to compel it to receive and consider new proofs in an admiralty appeal in a cause which is within the legitimate jurisdiction of that Court: *In re* Hawkins, Supreme Court of the United States, FULLER, C. J., January 30, 1893, 13 Sup. Ct. Rep., 512.

The Supreme Court of the United States has no jurisdiction to control by mandamus the discretion of the Circuit Court in granting or refusing a supersedeas upon an appeal to the Circuit Court of Appeals from an interlocutory order granting or continuing an injunction: *In re* Haberman Manufacturing Co., Supreme Court of the United States, BLATCHFORD, J., February 6, 1893, 13 Sup. Ct. Rep., 527.

MANDAMUS.

7. *Title to Office.*

While mandamus is not the appropriate mode of trying the question of the strict title to an office, yet, in such a proceeding, brought to compel the respondent to approve the official bond tendered by the relator, sufficient inquiry may be made to ascertain whether or not the relator's certificate of election or appointment is *prima facie* evidence of title to the office: State *ex rel.* Truesdell *v.* Plambeck, County Judge, Supreme Court of Nebraska, NORVAL, J., March 16, 1893, 54 N. W. Rep., 667.

[The proper method of trying the title to an office is by *quo warranto*, and not mandamus, on the grounds that mandamus never lies when there is any other adequate remedy, and that *quo warranto* furnishes more complete redress: State *v.* Sullivan, 53 N. W. Rep., 677; State *v.* Hamil, 11 So. Rep., 892; Peo. *v.* Gottling, 133 N. Y., 569; S. C., 30 N. E. Rep., 968; *Contra*, Luce *v.* Board of Ex'rs, 153 Mass., 108; S. C., 26 N. E. Rep., 419; Keough *v.* Board of Aldermen (Mass.), 31

N. E. Rep., 387. But where, as in the case above, the action is not brought directly to try the title to office, but only involves it collaterally, there can be no valid objection to inquiring into it so far as is necessary to the proper determination of the main question.]

See MUNICIPAL CORPORATIONS AND PUBLIC LAW, 4.

PROPERTY.

Cases selected by WILLIAM A. DAVIS.

COURTESY.

1. *Election—Presumption—Judgment Against Husband Not a Lien on the Land in which He Has Courtesy.*

Defendant, on his wife's decease, became tenant by courtesy in her real estate; she also willed him her property for life with a right to use whatever was necessary for his comfortable support. He did not elect under which he would hold. *Held*, That it will be presumed that he holds as tenant by the courtesy, and during the life of his children the land cannot be taken by the foreclosure of a lien filed thereon, to satisfy a judgment recovered against him on his indorsement of a note: Sill *v.* White, Supreme Court of Errors of Connecticut, PRENTICE, J., CARPENTER, J., dissenting, December 10, 1892, 26 Atl. Rep., 396.

DOWER.

2. *Partnership Property — Firm of Lawyers Dealing in Real Estate.*

Land purchased by a firm for the purpose of selling again at a profit is to be treated as personalty, so far as may be necessary for settling up the partnership affairs, and the right of dower is subject to the debts of the firm.

A firm of lawyers, engaged in the practice of their profession, may extend their business to, and include that of buying and selling real estate for profit, and such real estate should, in equity, be treated as personalty in order to protect the rights of creditors and partners: Young *v.* Thrasher, Supreme Court of Missouri, Division No. 1, MACFARLANE, J., March 25, 1893, 21 S. W. Rep., 1104.

HIGHWAY.

3. *Construction of Railroad — Changing Grade of Streets — Damages.*

A grant of a strip of land for railroad right of way does not carry by implication a release of damages to property abutting on a street, not in existence when the road was built, which were caused by a change in the grade of the railroad and the necessary extension of a fill upon the street beyond the limits of the right of way.

The right to change the grade of streets, inherent in a city council, cannot be delegated to a railroad company for its private advantage at the expense of property owners: Egbert *v.* Lake Shore & M. S. Rwy. Co., Appellate Court of Indiana, GAVIN, J., March 16, 1893, 33 N. E. Rep., 659.

HUSBAND AND WIFE.

4. *Conveyance before Marriage.*

Where a woman, in contemplation of a marriage which afterward takes place, voluntarily conveys her property without the consent of her future husband, the record of the deed therefor before the marriage does not prevent him from avoiding it as a fraud on his marital rights: Ferebee *v.* Pritchard, Supreme Court of North Carolina, SHEPHERD, C. J., February 21, 1893, 16 S. E. Rep., 903.

5. *Wife's Separate Trust Estate—Power to Charge.*

Where land is conveyed, in contemplation of marriage, to a trustee for the separate use of the wife, with power to convey "by deed, in which her husband and trustee must unite," a mortgage executed by the husband and wife is void for the trustee's failure to join therein: Mayo *v.* Farrar, Supreme Court of North Carolina, AVERY, J., February 21, 1893, 16 S. E. Rep., 910.

WATER RIGHTS.

6. *Cutting Ice—Injury to Dam Owner.*

The owner of a pondage right is not the absolute owner of the ice forming on the pond, but has the right to have it remain when such continuance is useful in the legitimate exercise of the right to use the water as a motive power for his mills, and the owner of the soil cannot cut the ice for sale where its removal works an actual injury to such rights: Howe *v.* Andrews, Supreme Court of Errors of Connecticut, THAYER, J., December 6, 1892, 26 Atl. Rep., 394.

TORTS.

Cases selected by ALEXANDER DURBIN LAUER.

ARREST.

1. *Arrest Without Warrant—Damages.*

In an action for damages for illegal arrest, by reason of the deputies not having a warrant in their possession at the time of the arrest, plaintiff was entitled to damages sustained by him by reason of his detention under such illegal arrest to the time he was delivered to the officer having a warrant therefor, and defendant's contention that his damages were not greater by reason of the deputies not having a warrant than they would have been had the warrant been in their possession, was held untenable: Cabell *v.* Arnold, Court of Civil Appeals of Texas, HEAD, J., March 30, 1893, 22 S. W. Rep., 62.

ASSAULT AND BATTERY.

2. *College "Rush."*

A student who rushes upon and injures an unsuspecting fellow student who is not participating in a college "rush," is guilty of an assault and battery, and liable in damages, notwithstanding the fact that he was pushed against the plaintiff by other students without anticipating the consequences: Markley *v.* Whitman, Supreme Court of Indiana, LONG, J., April 7, 1893, 54 N. W. Rep., 763.

LIBEL.

3. *Privileged Publications.*

To publish of a public officer that "he is said to have been in the workhouse and to have had a criminal record," is libelous *per se*, and is not privileged, on the ground that the words related to a matter of public interest and were spoken or published in good faith: Post Pub. Co. *v.* Maloney, Supreme Court of Ohio, WILLIAMS, J., January 31, 1893, 33 N. E. Rep., 921.

For a collected list of cases upon the above subject see article in 30 American Law Register, 556, *et seq.*

SEDUCTION.

4. *Definition of Seduction—Damages for Rape.*

Seduction is the act of persuading a woman to surrender her chastity. In its ordinary acceptation it implies a betrayal of confidence. There must be something more than a mere reluctance on the part of the woman to commit the act; her consent must be obtained by flattery, false promises, artifice, urgent importunity based on professions of attachment, or the like, for the woman by the man, and in reliance upon these persuasions and influenced solely by such promises, flattery, artifice and urgenmt iportunity, she then being chaste, surrenders her person and chastity to the alleged seducer.

Where, in an action for damages for the seduction of the plaintiff, whereby she became pregnant and had a child, the evidence showed the offence was committed when she was unconscious from the effects of drink administered by the defendant, the defendant was guilty of rape; such a disclosure does not defeat plaintiff's recovery, but aggravates the injury, and furnishes ground for the award of exemplary damages. In this case the jury awarded the plaintiff, a girl 16 years and 10 months old and employed as a hotel servant, $25,000.

Except as to the use of force, the elements forming the measure of damages in a case either of seduction or rape are very similar. Where a parent sues for the seduction of his daughter, and consequent loss of service, and it appears that the intercourse was accomplished by force, such a showing will not defeat the action, but will aggravate the injury. While the recovery of the parent is based upon a different principle from that involved where the female is the complainant, yet the same rule is applied to her case. If plaintiff was unconscious from the effects of wine at the time defendant had intercourse with her, her cause of action was not defeated by reason of such fact: Marshall *v.* Taylor, Supreme Court of California, GAROUTTE, J., March 31, 1893, 32 Pac. Rep., 867.

WILLS, EXECUTORS AND ADMINISTRATORS.

Cases selected by MAURICE G. BELKNAP.

ADMINISTRATOR.

1. *Funds of Decedent in Bank—Rights of Administrator de bonis non and Personal Representatives of Deceased Administrator Thereto.*

Where an administrator has a deposit of intestate in a bank trans-

ferred to his credit as administrator, his personal representatives are, on his death, entitled to receive it, and the bank, having paid it to them, cannot be held liable by intestate's administrator *de bonis non*: Sibbs *v.* Phila. Saving Fund Society, Supreme Court of Pennsylvania, WILLIAMS, J., February 20, 1893, 25 Atl. Rep., 1119; 32 W. N. C., 68; 153 Pa., 345.

GIFT MORTIS CAUSA.

2. *Delivery.*

The donor upon her deathbed, in a room of which she was, if not a mere visitor, at most a joint occupant with the donee, gave the donee the keys to two trunks lying at the foot of the bed on which she, the donor, was at the same time, saying to the donee that the trunks and their contents were hers. *Held*, a complete gift mortis causa: Debinson *v.* Emmons, Supreme Judicial Court of Massachusetts, BARKER, J., April 4, 1893, 33 N. E. Rep., 706.

WILLS.

3. *Description of Property—Mistake—Extrinsic Evidence.*

Where a testator devised property as "the tract of land on which I now live," and the particular description of the same land in the will by courses and distances shows a palpable omission, the general description will prevail over the particular description, and a prior unattested will, proved to be genuine, is admissible, as extrinsic evidence, to remove the ambiguity in the later will, and to identify the subject of the devise, since such former will is in effect a written declaration by the testator as to the subject-matter of his bounty: Thompson *v.* Thompson, Supreme Court of Missouri, SHERWOOD, J., March 20, 1893, 21 S. W. Rep., 1085.

4. *Perpetuities.*

A gift by will, which is not to take effect until a certain sum for another purpose shall have been received out of the income of an estate, will not be declared void, for the reason that it possibly may be deferred beyond the time allowed by the rule against perpetuities, where the Court can see with judicial certainty, regard being had to the income-yielding quality of the estate, that the sum specified will be raised long before such time, especially where the gift is to a charity: *In re* Lennig's Estate, Supreme Court of Pennsylvania, PER CURIAM, affirming PENROSE, J., of the Orphans' Court of Philadelphia, February 6, 1893, 25 Atl. Rep., 1049; 154 Pa., 209.

5. *Undue Influence—Ratification.*

Where a will has been obtained by fraud and undue influence no subsequent ratification would validate it without a formal re-execution or republication: Haines *v.* Hayden, Supreme Court of Michigan, MONTGOMERY, J., April 21, 1893, 54 N. W. Rep., 911.